



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SP

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,502	05/25/2001	Frederick Robert Chang	SBC-0101	4455
7590	03/09/2005		EXAMINER	
Dale B. Halling Law Office of Dale B. Halling 24 South Weber St., Ste 311 Colorado Springs, CO 80903				JACOBS, LASHONDA T
		ART UNIT	PAPER NUMBER	2157

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/866,502	CHANG ET AL.	
	Examiner LaShonda T Jacobs	Art Unit 2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 06 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-36 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-36 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Response to Amendment

This is a Final Office Action Rejection in response to Applicants' Request for Reconsideration filed on December 6, 2004. Claims 1-36 are presented for further examination.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutta et al (hereinafter, "Dutta", 2002/0073204) in view of Feigenbaum.

As per claim 1, Dutta discloses a method for improving the reliability of peer-to-peer network downloads, comprising:

- a) initiating a search from a client on a peer-to-peer network (abstract, paragraphs 0007, 0037 and 0044-0045);
- b) receiving a list of servers that satisfy the search (paragraph 0037); and
- c) selecting at least one of the servers from the list of servers (paragraphs 0037 and 0044-0045);

However, Dutta does not explicitly disclose:

- d) selecting one of a plurality of downloading systems based on a predetermined criteria; and

e) downloading a file using one of the plurality of downloading systems.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- d) selecting one of a plurality of downloading systems based on a predetermined criteria (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and
- e) downloading a file using one of the plurality of downloading systems (col. 3, lines 16-38).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems in order to allow a client to download different portions of a file in a timely and efficient manner.

As per claim 2, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (d) further includes the step of:

- d1) selecting a multiple concurrent download system.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- d1) selecting a multiple concurrent download system (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems in order to allow a client to download different portions of a file in a timely and efficient manner.

As per claim 3, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (d) further includes the step of:

d1) selecting a multiple concatenated download system.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d1) selecting a multiple concatenated download system (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems in order to allow a client to download different portions of a file in a timely and efficient manner.

As per claim 4, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (d) further includes the step of:

d1) selecting a serial concatenated download system.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d1) selecting a serial concatenated download system (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems in order to allow a client to download different portions of a file in a timely and efficient manner.

As per claim **5**, Dutta discloses wherein step (d) further includes the step of:

- d1) determining a connection speed to the at least one of the servers (paragraphs 0035 and 0065).

As per claim **6**, Dutta discloses wherein step (d) further includes the step of:

- d1) comparing a connection speed to the at least one of the servers to an available bandwidth (paragraphs 0035, 0045 and 0065).

As per claim **7**, Dutta discloses wherein step (a) further includes the steps of:

- a1) entering a text string (paragraph 0037).

As per claim **8**, Dutta discloses wherein step (a) further includes the step of:

- a1) entering a unique key (paragraph 0041).

As per claim **9**, Dutta discloses wherein step (a) further includes the step of:

- a1) broadcasting a search query to the peer-to-peer network (paragraph 0037).

As per claim **10**, Dutta discloses wherein step (a) further includes the step of:

- a1) transmitting a search query to a central server (paragraphs 0036-0037).

As per claim **11**, Dutta discloses wherein step (b) further includes the step of:

- b1) receiving a document name (paragraph 0045).

As per claim 12, Dutta discloses wherein step (b) further includes the step of:

- b1) receiving a file size (paragraph 0044).

As per claim 13, Dutta discloses wherein step (b) further includes the step of:

- b1) receiving a source node for a file (paragraphs 0044-0045).

As per claim 14, Dutta discloses wherein step (b) further includes the step of:

- b1) receiving an available bandwidth at a server (paragraph 0045).

As per claim 15, Dutta discloses a method of improving the reliability of peer-to-peer network downloads, comprising the steps of:

- a) originating a search from a client on a peer-to-peer network (abstract, paragraphs 0007, 0037 and 0044-0045);
- b) broadcasting a search query over the peer-to-peer network (paragraph 0037);
- c) receiving a list of servers and a list of associated document names that satisfy the search query (paragraph 0037);
- d) selecting at least one of the servers from the list of servers (paragraphs 0037 and 0044-0045);

However, Dutta does not explicitly disclose:

- e) determining one of a plurality of downloading systems based on a predetermined criteria ; and

f) downloading a file.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d) determining one of a plurality of downloading systems based on a predetermined criteria (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and
e) downloading a file (col. 3, lines 16-38).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems in order to allow a client to download different portions of a file in a timely and efficient manner.

As per claim 16, Dutta discloses wherein step (a) further includes the step of:

a1) entering a unique key that identifies the file (paragraph 0041).

As per claim 17, Dutta discloses wherein step (c) further includes the step of:

c1) receiving a file size, a source node and a unique key (paragraphs 0041 and 0044).

As per claim 18, Dutta discloses wherein step (d) further includes the step of:

d1) measuring a connection speed to a plurality of servers (paragraphs 0035 and 0065);
d2) comparing the connection speed of the plurality of servers to an available bandwidth to the client (paragraphs 0035, 0045 and 0065).

As per claim 19, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (e) further includes the steps of:

e1) determining if an available bandwidth is less than a connection speed to two of the

servers;

e2) when the available bandwidth is less than the connection speed to two of the servers, selecting a serial concatenated download system.

In an analogous art, Feigenbaum discloses a multi-server file download including:

e1) determining if an available bandwidth is less than a connection speed to two of the servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and

e2) when the available bandwidth is less than the connection speed to two of the servers, selecting a serial concatenated download system (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 20, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose the steps of:

e3) when the available bandwidth is not less than the connection speed to two of the servers, selecting a multiple concurrent download system.

In an analogous art, Feigenbaum discloses a multi-server file download including:

e3) when the available bandwidth is not less than the connection speed to two of the servers, selecting a multiple concurrent download system (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 21, Dutta discloses the invention substantially as claims discussed above. However, Dutta does not explicitly disclose the steps of:

e3) when the available bandwidth is not less than the connection speed to two of the servers, selecting a multiple concatenated download system.

In an analogous art, Feigenbaum discloses a multi-server file download including:

e3) when the available bandwidth is not less than the connection speed to two of the servers, selecting a multiple concatenated download system (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 22, Dutta discloses wherein step (e2) further includes the steps of:

i) starting a download from one of the list of servers (paragraphs 0044-0045 and 0049).

However, Dutta does not explicitly disclose:

ii) if the one of the list of servers is interrupted during the download, selecting a second of the list of server to start a download;

iii) requesting the download to start at a next byte after a last received byte.

In an analogous art, Feigenbaum discloses a multi-server file download including:

ii) if the one of the list of servers is interrupted during the download, selecting a second of the list of server to start a download (col. 2, lines 52-65, col. 3, lines 56-67 and col. 4, lines 1-9);

iii) requesting the download to start at a next byte after a last received byte (col. 2, lines 52-65).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was to modify Dutta by including a start byte for the download allowing a client to download different portions of a file in a timely and efficient manner.

As per claim 23, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (e3) further includes the steps of:

i) starting a download from at least two of the servers;

ii) if any of the at least two of the servers finishes the download, terminating the download for any other servers.

In an analogous art, Feigenbaum discloses a multi-server file download including:

i) starting a download from at least two of the servers (col. 2, lines 52-65, col. 3, lines 56-67 and col. 4, lines 1-9);

ii) if any of the at least two of the servers finishes the download, terminating the download for any other servers (col. 2, lines 52-65, col. 3, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was to modify Dutta by including a start byte for the download allowing a client to download different portions of a file in a timely and efficient manner.

As per claim 24, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (e3) further includes the steps of:

i) starting a first download at a first byte of the file for one of the at least two servers;

ii) starting a second download at a second byte of the file for a second of the at least two servers;

iii) determining when a complete file has been downloaded by combining the first download and the second download.

In an analogous art, Feigenbaum discloses a multi-server file download including:

i) starting a first download at a first byte of the file for one of the at least two servers (col. 2, lines 52-65, col. 3, lines 56-67 and col. 4, lines 1-9);

ii) starting a second download at a second byte of the file for a second of the at least two servers (col. 2, lines 52-65, col. 3, lines 56-67 and col. 4, lines 1-9); and

iii) determining when a complete file has been downloaded by combining the first download and the second download (col. 2, lines 52-67).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was to modify Dutta by including a start byte for the download allowing a client to download different portions of a file in a timely and efficient manner.

As per claim 25, Dutta discloses a method of operating a peer-to-peer network comprising the steps of:

- a) initiating a search from a first peer to the peer-to-peer network (abstract, paragraphs 0007, 0037, and 0044-0045);
- b) receiving a list of peer servers that meet a search query (paragraph 0037); and
- c) selecting one of a plurality of downloading systems based on a predetermined criteria (paragraphs 0037 and 0044-0045).

However, Dutta does not explicitly disclose:

- d) downloading a file using the one of the plurality of downloading systems.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- d) downloading a file using the one of the plurality of downloading systems (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems in order to allow a client to download different portions of file in a timely and efficient manner.

As per claim 26, Dutta discloses wherein step (c) further includes the steps of:

- c1) determining a connection speed to each of the peer servers on the list of peer servers (paragraph 0035);
- c2) selecting a subset of the list of peer servers based on the connection speed (paragraph 0035).

As per claim 27, Dutta discloses wherein step (c1) further includes the step of:

- i) receiving a test file from each of the servers on the list of servers (paragraph 0050).

As per claim 28, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein step (c1) further includes the step of:

- i) determining an order of response receipt from each of the servers on the list of servers.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- i) determining an order of response receipt from each of the servers on the list of servers (col. 3, lines 42-52).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by ranking servers according to their performance measurements in order to allow a client to download different portions of file in a timely and efficient manner.

As per claim 29, Dutta discloses wherein step (c1) further includes the step of:

- i) pinging each of the servers on the list of servers (paragraph 0046).

As per claim 30, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein the step (d) further includes the steps of:

- d1) when an available bandwidth is less than a two times a connection speed, selecting a server with a fastest connection speed; and
- d2) starting a download from the server with the fastest connection speed.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- d1) when an available bandwidth is less than a two times a connection speed, selecting a server with a fastest connection speed (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and
- d2) starting a download from the server with the fastest connection speed (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 31, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose wherein the step (d) further includes the steps of:

- d3) determining if the server with the fastest connection speed had an error before the file was downloaded;

- d4) when the server with the fastest connection speed had an error before the file was downloaded, selecting a second server;
- d5) determining a last byte received; and
- d6) transmitting download starting from a next byte command to a second server.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- d3) determining if the server with the fastest connection speed had an error before the file was downloaded (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and
- d4) when the server with the fastest connection speed had an error before the file was downloaded, selecting a second server (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).
- d5) determining a last byte received (col. 2, lines 53-67); and
- d6) transmitting download starting from a next byte command to a second server (col. 2, lines 53-67).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 32, Dutta discloses the invention substantially as claims discussed above. However, Dutta does not explicitly disclose wherein the step (d) further includes the steps of:

- d1) when an available bandwidth is not less than a two times a connection speed, selecting a plurality of servers from the list of servers; and

d2) starting a plurality of simultaneous downloads from the plurality of servers.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d1) when an available bandwidth is not less than a two times a connection speed,

selecting a plurality of servers from the list of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and

d2) starting a plurality of simultaneous downloads from the plurality of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 33, Dutta disclose the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose the steps of:

d3) determining if the client has received a complete version of the file from one of the plurality of servers;

d4) when the client has received a complete version of the file from one of the plurality of servers, terminating a rest of the downloads.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d3) determining if the client has received a complete version of the file from one of the plurality of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and

d4) when the client has received a complete version of the file from one of the plurality of servers, terminating a rest of the downloads (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 34, Dutta discloses the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose the steps of:

d1) when an available bandwidth is not less than a two times a connection speed, selecting a plurality of servers from the list of servers; and

d2) starting a plurality of simultaneous offset downloads from the plurality of servers.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d1) when an available bandwidth is not less than a two times a connection speed, selecting a plurality of servers from the list of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and

d2) starting a plurality of simultaneous offset downloads from the plurality of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of

downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 35, Dutta disclose the invention substantially as claims discussed above.

However, Dutta does not explicitly disclose the step of:

d3) when a complete file can be formed from the plurality of simultaneous offset downloads, constructing a complete file.

In an analogous art, Feigenbaum discloses a multi-server file download including:

d3) when a complete file can be formed from the plurality of simultaneous offset downloads, constructing a complete file (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

As per claim 36, Dutta discloses a method of operating a peer-to-peer network comprising the steps of:

- a) initiating a search from a first peer to the peer-to-peer network (abstract, paragraphs 0007, 0037 and 0044-0045) ;
- b) receiving a list of peer servers, a plurality of associated file names, a plurality of file sizes, a plurality of bandwidths and a plurality of source nodes that meet a search query (paragraphs 0037, and 0044-0045);

c) determining a connection speed to each of the peer servers on the list of peer servers (paragraph 0035);

d) selecting a subset of the list of peer servers based on the connection speed (paragraph 0035);

However, Dutta does not explicitly disclose:

e) when an available bandwidth is less than a two times the connection speed, selecting a server with a fastest connection speed;

f) starting a download from the server with the fastest connection speed;

g) determining if the server with the fastest connection speed had an error before the file was downloaded;

h) when the server with the fastest connection speed had an error before the file was downloaded, selecting a second server;

i) determining a last byte received;

j) transmitting a download starting from a next byte command to a second server;

k) when an available bandwidth is not less than a two times a connection speed, selecting a plurality of servers from the list of servers;

l) starting a plurality of simultaneous downloads from the plurality of servers;

m) determining if the client has received a complete version of the file from one of the plurality of servers; and

n) when the client has received a complete version of the file from one of the plurality of servers, terminating a rest of the downloads.

In an analogous art, Feigenbaum discloses a multi-server file download including:

- e) when an available bandwidth is less than a two times the connection speed, selecting a server with a fastest connection speed (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9);
- f) starting a download from the server with the fastest connection speed (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9);
- g) determining if the server with the fastest connection speed had an error before the file was downloaded (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9);
- h) when the server with the fastest connection speed had an error before the file was downloaded, selecting a second server (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9);
- i) determining a last byte received (col. 2, lines 53-67);
- j) transmitting a download starting from a next byte command to a second server (col. 2, lines 53-67);
- k) when an available bandwidth is not less than a two times a connection speed, selecting a plurality of servers from the list of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9);
- l) starting a plurality of simultaneous downloads from the plurality of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9);
- m) determining if the client has received a complete version of the file from one of the plurality of servers (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9); and

n) when the client has received a complete version of the file from one of the plurality of servers, terminating a rest of the downloads (col. 3, lines 22-38, lines 56-67 and col. 4, lines 1-9).

Given the teaching of Feigenbaum, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dutta by including a plurality of downloading systems allowing a client to select a download system in order to transfer different portions of a file in a timely and efficient manner.

Response to Arguments

3. Applicant's arguments filed December 6, 2004 have been fully considered but they are not persuasive.

The Office notes the following arguments:

- a. Feigenbaum cannot select a download system since it only describes a single downloading system.
- b. The combination of Dutta and Feigenbaum does not describe or suggest, "selecting between a plurality of download systems."
- c. Feigenbaum does not teach multiple concurrent downloading.
- d. Feigenbaum does not teach serial concatenated downloading.

In response to:

(a)-(d), Dutta and Feigenbaum disclose substantially the invention as broadly claimed. In addition, the applicant asserted that neither Hare nor Knudsen disclose the limitations of claim 1.

The examiner disagrees with the precedent assertion. The examiner kindly submits that the applicants misread the applied references. However, Applicants are interpreting the claims very narrow using the specification without considering the broad teaching of the reference stated in the rejection. The aforementioned assertion selecting between a plurality of downloading systems is not disclose by Feigenbaum with regard to the invention of claim was supported by objective factual evidence and was not found to be of substantial evidentiary value. The examiner has provided in the last office action of the parent application, a convincing line of reasoning as to why the artisan would have found the claim invention to have been obvious in light of the teachings of the cited references. Dutta discloses a method that allows a user to search for an application to download from a plurality of hosts. The search results allow a user to select an application to download from a host with the fastest connection speed (abstract, paragraphs 0035, 0041 and 0052). On the other hand, Feigenbaum discloses downloading a file to a client from a plurality of secondary servers based on the performance of the servers (col. 3, lines 25-52). Applicants cannot rely on the specification to impart to the claims limitations not recited therein. Such reliance is ineffective to define over the prior art. *In re Lundberg*, 244 F2d 543, 113 USPQ 530 (CCPA 1957); *In re Winklans*, 188 USPQ 129 (CCPA 1975). Applicant is further reminded of the clear difference between reading the claims in light of the specification as allowed by 35 U.S.C. 112, 6th paragraph, and by *In re Donaldson* 29 USPQ2d, 1845, 16 F.3d 1189 (Fed. Cir, 1994), and reading limitations of the specification into the claims *In re Prater* 415 F2d 1393, 162 USPQ 541 (CCPA 1969). Applicants are reminded that the examiner is entitled to the broadest reasonable interpretation of the claims. The Applicants always have the opportunity to amend the claims during prosecution and broad interpretation by the examiner

reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater* 162 USPQ 541, 550-51 (CCPA 1969).

Applicants asserted that combining Dutta with Feigenbaum does not describe selecting between a plurality of downloading systems. In response, the examiner disagrees with the preceding allegations. However, Applicants are interpreting the claim very narrow without considering the broad teaching of the references used in the rejection. Applicants are reminded that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. Furthermore, the examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya* USPQ 607 (CCPA 1975). On the other hand, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA) 1969. As per Applicants' arguments that all claim limitations be taught or suggested by the prior art, Applicants appear to misinterpret the guidance given under MPEP 2142. In particular, references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA) 1969.

There are numerous court decisions supporting the position given above. The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions In re Delisle 406 Fed 1326, 160 USPQ 806; In re Kell, Terry and Davies 208 USPQ 871; and In re Fine, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1596, 1598 (Fed. Cir. 1988) (Citing In re Lalu, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined In re Lamberti et al., 192 USPQ 278 (CCPA) that:

- (a) obviousness does not require absolute predictability;
- (b) non-preferred embodiments of prior art must also be considered; and
- (c) the question is not express teaching of references, but what they would suggest.

(B). According to In re Jacoby, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In re Bode, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement, that which is disclosed therein.

Furthermore, the skilled artisan would not consider the prior art embodiments in a vacuum, but would have had the motivation to combine the advantageous features of the prior art in the manner purported by the examiner for the reasons and motivations given above as well as in the prior office action. Thus the combined teachings of Dutta and Feigenbaum when considered as a whole to one of ordinary skill in the art make obvious that Applicants dispute. Hence the 35 U.S.C 103 is hereby sustained.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaShonda T Jacobs whose telephone number is 703-305-7494. The examiner can normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on 703-308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 2157

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

ltj
March 1, 2005


ARIO ETIENNE
ADVISORY PATENT EXAMINER
LOGY CENTER 2100